



[2020] JMSC Civ. 117

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018HCV00633

BETWEEN	ELERTANT UBANKS	CLAIMANT
AND	DORETTE UBANKS	1ST DEFENDANT
AND	OWEN BURNETTE	2ND DEFENDANT

IN CHAMBERS

Mr. Denzle Latty and Ms. L. Edwards for the Claimant

Mr. Linton Walters and Ms. Deniece Beaumont Walters for the Defendant

Heard: January 28th 2020 & June 18, 2020

**LAND LAW- Partition Act- Application for sale of property-Joint Tenants-
Presumption of Trust**

WOLFE-REECE, J

INTRODUCTION & BACKGROUND

[1] This claim is for the partition and sale of ALL THAT parcel of land part of ELTHAM in the parish of SAINT ANN being the Lot numbered NINETEEN comprised in the Certificate of Title registered at Volume 1217 Folio 788 also known as 19 Selbourne Gardens, Smith Terrace, Ocho Rios in the parish of St. Ann.

[2] The parties in the claim are the joint registered proprietors of the abovementioned property. The Claimant, Mr. Elertant Ubanks on the 20th February 2018 filed a Fixed Date Claim Form against his ex-wife, Mrs. Dorrette Ubanks (1st Defendant) and her adult son who was born to her from a previous relationship, Mr. Owen Burnette (2nd Defendant). The Claimant seeks the following orders:

- i. An order that the subject property be sold with first preference to the Defendants and that the net proceeds be equally shared as joint tenants.*
- ii. An Order that should the Defendants choose not to exercise their option to purchase the interest of the Claimant, that the said premises be sold by private treaty and the proceeds shared in accordance with their respective interest. The Claimant's Attorney-at-law to have carriage of sale in any event.*
- iii. An order that the property be valued by a reputable valuator to be agreed by the parties failing which one should be appointed by the Registrar of the Supreme Court should either party fail and/or refuse to execute the necessary documents.*
- iv. An order allowing the claimant's attorney to pay all the relevant taxes, costs, fees, and disbursement and to then pay each party their respective shares from the net proceeds.*
- v. An Order that the Agreement for Sale and/or the Instrument of Transfer and/or any other document be signed by the Registrar of the Supreme Court should either party fail and/or refuse to execute the necessary documents.*

CLAIMANTS' CASE

[3] The crux of the claimant's case is that he and his ex-wife, Miss Dorrette Ubanks, were solely responsible for the purchase of the property and that Mr. Owen Burnette's name was merely added to the title out of convenience. Mr. Ubanks noted that Mr. Burnette made absolutely no contribution to the purchase of the

property. He contends that the subject property was acquired on the 26th day of August, 2009 when sums were taken from a joint account held by himself and the 1st Defendant at Sun Coast Bank in Florida.

- [4] Mr. Ubanks' evidence is that, not only did he contribute to the purchase of the property, he also contributed to the construction of the house on the property. He gave evidence that the 1st Defendant was laid off from Avatar Holdings in or about the year of 2010 and that as a result of her being unemployed, she was not in a position to fully contribute to the construction of the house on the subject property.
- [5] The Claimant's further evidence is that he deducted a total of Twenty- Nine Thousand Four Hundred and Sixty-Two United States Dollars and Seventy-Five cents (\$29,462.75 USD) from his 401K for the purpose of constructing the house on the subject property.
- [6] Mr. Ubanks rebuffs the argument that the 2nd Defendant contributed to the purchase of the property or to the construction of the house thereon. The Claimant argued that at the time of the purchase and construction, Mr. Burnette was not financially able to contribute towards the financing of same because his company was in a financial bind. It was further argued that even though the 2nd Defendant's name appears on the title, he was not intended to have a beneficial interest in the property and his name was only added because of the maternal relationship between the 1st and 2nd Defendant.
- [7] The Claimant noted that he no longer sees the need to hold the property as joint tenants with the Defendants. He is therefore asking that the property be sold and that he be apportioned half of the current market value of the property.
- [8] Mr. Latty, Counsel for the Claimant, argued that "while there is a clear presumption that joint legal ownership naturally and invariably runs parallel to beneficial ownership" the presumption may be rebutted by evidence which shows that the beneficial ownership is different from the legal ownership. He relied on paragraph 56 of the judgment of **Stack v Dowden** [2007] UKHL 17 to support his point.

[9] Counsel also submitted that in order to determine how the beneficial ownership should be apportioned, the court should look to the intentions of the parties at the time when the property was acquired. Counsel relied on paragraph 32 of the case of **Fowler v Barron** - [2008] EWCA Civ 377, which was applied by D. Fraser J in the case of **Vernal Ernest Patterson v Millicent Ann Nelson Patterson** [2019] JMSC Civ 10. In that case, the following was expressed:

“For the purpose of determining the parties' shared intentions about the beneficial ownership of the property, the court must consider the whole of the parties' relationship so far it illumines their shared intentions about the ownership of the property and the court must draw any appropriate inferences.”

DEFENDANT'S CASE

[10] Mrs. Dorrette Ubanks filed an affidavit in response on the 9th July, 2018 which formed a part of her evidence wherein she denied that the Claimant and the Defendants held the property in equal shares. Instead, she argued that Mr. Ubanks is entitled only to 15% of the purchase price of the property less 15% of the closing cost associated with the purchase.

[11] Mrs. Ubanks noted that what the parties acquired when they purchased the property in 2009 was the land only. She noted that the property was purchased for the sum of Five Million Two Hundred and Eighty Thousand Dollars (\$5,280,000.00) plus closing costs of Three Hundred and Seventy-Six Thousand Six Hundred and Thirty-One dollars (\$376,631.00).

[12] Mrs. Ubanks' evidence is that subsequent to the purchase of the property both her and the 2nd Defendant financed the building of a structure on the premises and that their combined contribution to date totals **Thirty Million Three Hundred and Seventy-One Thousand Two Hundred and Sixty-Eight Dollars and Forty-four cents (\$30,371,268.44)**. She argued that the only contribution which the Claimant made to the property was the sum of Five Hundred Thousand Dollars (\$500,000.00) which he contributed to the purchase price.

- [13] Mrs. Ubanks did not dispute that the Claimant withdrew monies from his 401K, however, she denied that such sums were contributed towards the construction of the building on the property. Instead, she argued that the Claimant was engaged in the construction of a building at Pimento Walk, Saint Ann, Jamaica at the same time that the property in dispute was purchased. She stated in her Affidavit that the sum that the Claimant claims to have deducted from his 401K was used for the construction of the building on the Pimento Walk property and not towards the purchase and the building on the property in dispute.
- [14] Counsel Mr. Walters also relied on the case of ***Stack v Dowden*** [2007] UKHL 17 in submitting that the presumption that '*equity follows the law*' can be rebutted by showing that the beneficial interest differs from the legal ownership with the onus being on the party who asserts that the beneficial interest is divided other than equally, to prove same.
- [15] Counsel also advanced the principle of "common intention" to urge on the Court that based on the conduct of the parties, it is abundantly clear that an equal beneficial interest was never intended as the Claimant only contributed Five Hundred Thousand Dollars (\$500,000.00) which is equivalent to 15% of the purchase price. Counsel went further to argue that the case at bar can be distinguished from cases where the parties were former spouses who purchased property for use as a family home or residential property. Nor is the case synonymous to cases where the parties pooled their resources for the common good. It was submitted that the building was never the family home, nor did the parties ever hold a joint account, whether during, before or subsequent to the marriage.
- [16] Mr. Walters also argued that based on the principle of resulting trust, the beneficial interest of the respective legal proprietors can be apportioned based the parties' individual contribution towards the purchase of the property. Counsel relied on the recently decided case of ***Horace Boswell v Jennifer Johnson*** [2019] JMSC CIV 17 on this point.

[17] In light of the foregoing, the Defendants are seeking the following orders:

- i. *That the Claimant is entitled to \$500,000.00 with interest, as his sole contribution to the purchase of the land, with the purchase price being Five Million Two Hundred and Eighty Thousand Dollars (\$5,280,000.00);*
- ii. *That the Claimant's name be removed by the Registrar of Titles pursuant to the Registration of Titles Act from the Duplicate Certificate of Title registered at Volume 1217 Folio 788 and a new Duplicate Certificate of Title be issued in the names of the 1st and 2nd Defendants;*
- iii. *That in the event that the Court rules that the Claimant is entitled to the interest claimed, that an equitable accounting be undertaken to ascertain the Claimant's liability towards the property registered at Volume 1217 Folio 788 and that one third of the expenses be due and payable by the Claimant, to the Defendants;*
- iv. *That further in the event the Court rules that the Claimant is entitled to the interest claimed in the property that the sum of Ten Million One Hundred and Twenty-Three Thousand Seven Hundred and Fifty-Six Jamaican Dollars any share adjudicated to the Claimant prior to him being paid any sum representing his share of the property in dispute;*
- v. *That this Honourable Court grant such Orders as the Court deem suitable in the circumstances.*

ISSUES, LAW & ANALYSIS

Whether the Court can give effect to the parties' beneficial interest where same is contrary to their legal interest

The indefeasibility of a Registered Title

[18] The starting point when dealing with a registered title is the Registration of Titles Act. In particular, sections 68, 70 & 71 provides the registered proprietor with an indefeasible title. The pertinent section for the purpose of this matter is section 68 which provides as follows:

“No certificate of title registered and granted under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in, or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power.”

- [19] Though the Court endeavours to honour the sanctity of the registered title, there are circumstances where justice demands that the court pierce the veil of the indefeasible title. In the Privy Council decision of **Gardener and Another v Lewis** (1998) 53 WIR 236 Lord Browne-Wilkinson expressed that:

“The land certificate is conclusive as to the legal interests in the land. But that does not mean that the personal claims (e.g. for breach of contract to sell or to enforce trusts affecting the registered land against the trustee) cannot be enforced against the registered proprietor.”

- [20] As stated earlier, when dealing with registered land, the presumption is that the legal interest is parallel to the beneficial interest. This principle is expressed in the maxim ‘aequitas sequitur legem’ (equity follows the law). This principle was discussed at length in the case of **Stack v Dowden** - [2007] UKHL 17, at paragraph 56 of the judgment when Baroness Hale of Richmond expressed as follows:

“Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest.”

- [21] It is clear based on the foregoing that the presumption that equity follows the law can be rebutted by evidence to the contrary. In addition, the paragraph highlights the fact that the burden of proof is on the party who is asserting to have a beneficial interest that is contrary to the legal interest to prove his case.

- [22] Baroness Hale highlighted distinct avenues to be taken by the court in determining the beneficial interest of the parties. Firstly, whether a resulting trust was created based on the contributions made to the purchase of the property or secondly, whether a constructive trust was created based on the common intention of the parties.
- [23] Counsel for the Claimant did not specifically state that the property was being held on trust by the 1st and 2nd Defendants. Nor did he specify whether he is asserting that there existed a constructive or resulting trust. Though there is a school of thought that the law has developed to the point that there is no need to distinguish between a resulting or constructive trust, for the purpose of this matter, it is necessary to explore both legal regimes in order to determine where the parties' beneficial interests lie.
- [24] The distinction between the two classes of trust was discussed in the case of **Stack v Dowden**, supra, when Baroness Hale expressed that a resulting trust is based on the intention which the court imposes on the parties based on their respective contribution towards the property. While a constructive trust focuses on the common intention of the parties regarding their respective beneficial interests. Her Ladyship expressed at paragraph 60 as follows:

“As K Gray and S F Gray, in Elements of Land Law, 4th edition 2005, point out at p 864, para 10.21:

“In recent decades a new pragmatism has become apparent in the law of trusts. English courts have eventually conceded that the classical theory of resulting trusts, with its fixation on intentions presumed to have been formulated contemporaneously with the acquisition of title, has substantially broken down . . . Simultaneously the balance of emphasis in the law of trusts has transferred from crude factors of money contribution (which are pre-eminent in the resulting trust) towards subtler factors of intentional bargain (which are the foundational premise of the constructive trust) . . . But the undoubted consequence is that the doctrine of resulting trust has conceded much of its field of application to the constructive trust, which is nowadays fast becoming the primary phenomenon in the area of implied trusts.”

*There is no need for me to rehearse all the developments in the case law since Pettitt v Pettitt and Gissing v Gissing, discussed over more than 70 pages following the quoted passage, by Chadwick LJ in Oxley v Hiscock [2004] EWCA Civ 546, [2005] Fam 211, and most importantly by my noble and learned friend, Lord Walker of Gestingthorpe in his opinion, which make good that proposition. **The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.**" [Emphasis Mine]*

[25] What is important to note is that in **Stack v Dowden**, supra, the court was concerned with analysing the beneficial interests of spouses (married or common law) in relation to their respective beneficial interests in the family home. Her Ladyship expressed as follows: *"In law, "context is everything" and the domestic context is very different from the commercial world."*

[26] While the facts of the current case are distinguishable from **Stack v Dowden**, supra, in that the property in dispute in the current case was never the family home, the principles enunciated by the House of Lords in the celebrated case are equally applicable in resolving the issues before the court. It is therefore important to explore the law of constructive trust to determine the common intentions of the parties based on their conduct at the time of purchase and afterwards to determine what the parties agreed concerning their respective beneficial interests. It is also prudent to explore the law relating to resulting trust to determine based on each party's contribution, where their respective interests lie.

Constructive Trust- Whether there was a common intention to hold the property as tenants-in-common with each party's interest being limited to the extent of their contribution?

[27] McIntosh JA explained the concept of constructive trust in the Court of Appeal decision of **McCalla (Eric) et al v McCalla (Grace)** [2012] JMCA Civ 31 when she opined at paragraph 27 as follows:

“It is settled law, approved and applied in this jurisdiction in cases such as Azan v Azan (1985) 25 JLR 301, that where the legal estate in property is vested in the name of one person (the legal owner) and a beneficial interest in that property is claimed by another (the claimant), the claim can only succeed if the claimant is able to establish a constructive trust by evidence of a common intention that each was to have a beneficial interest in the property and by establishing that, in reliance on that common intention, the claimant acted to his or her detriment. The authorities show that in the absence of express words evidencing the requisite common intention, it may be inferred from the conduct of the parties.”

[28] It is clear from the dicta of McIntosh JA that in determining whether a constructive trust was established two factors must be established:

- (1) There must have been a common intention between the parties.
- (2) The party seeking to assert his beneficial interest must demonstrate that he has acted to his detriment.

[29] In cases of this nature, where the parties share a kinship, it is not expected that the parties will conduct their affairs with the diligence and rigidity to be expected from commercial transactions. Situations of this nature require that the court look at the entire course of dealings of the parties to determine their common intention. The case of **Gissing v Gissing** [1970] 3 WLR 255 is instructive on this point, in particular the words of Viscount Dilhorne on page 263 where his Lordship opined as follows:

“My Lords, in determining whether or not there was such a common intention, regard can of course be had to the conduct of the parties. If the wife provided part of the purchase price of the house, either initially or subsequently by paying or sharing in the mortgage payments, the inference may well arise that it was the common intention that she should have an interest in the house. To establish this intention there must be some evidence which points to its existence. It would not, for instance, suffice if the wife just made a mortgage payment while her husband was abroad. Payment for a lawn and provision of some furniture and equipment for the house does not of itself point to the conclusion that there was such an intention.”

I appreciate that there may be very great difficulty in establishing such an intention where the dispute is between former spouses but that does not alter the question to be decided. In every case it has to be established that the circumstances are such that there is a resulting, implied or constructive trust in favour of the claimant to a beneficial interest or a share in it. In the case of former spouses that will ordinarily depend on whether it can be inferred from the evidence that there was such a common intention.”

[30] The facts of this case are quite unique and are distinguishable from all the cases cited. In the current case, the matter is not limited to a dispute between former spouses, the court is also called upon to determine the interest of the adult son of one of the parties as the name of all three persons is duly endorsed on the title. The evidence of the Claimant and the 1st Defendant are at variance. Which therefore means that the court must make a decision based on the balance of probabilities which party's version of events is to be accepted as the truth.

[31] In determining the true intentions of the parties, there are several questions which must be addressed. Baroness Hale listed some of these questions in **Stack v Dowden**, supra, the list is not exhaustive and the questions to be asked will turn on the facts of each case. Baroness Hale opined as follows:

“Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses.”

[32] When asked during cross-examination about the payment of the purchase money, Mr. Ubanks gave evidence that Mrs. Ubanks and himself made the payment. When asked who he made the payment to, he said he could not remember. When asked

how the payment was made, he again said that he could not recall. Mr. Ubanks also stated that everything went through his wife.

- [33] Though I appreciate that memory fades with the passage of time I find it difficult to believe that Mr. Ubanks cannot recall the mode of payment, be it by cash, cheque or wire transfer. It is also not favourable to Mr. Ubanks that he cannot recall who the money was paid to.
- [34] Both parties put forward different facts concerning whether the funds to purchase the property came from a joint account held by the Claimant and the 1st Defendant. The onus is on the party who asserts, to prove. The Claimant has failed to provide any documentary evidence to show that he held an account with the 1st Defendant or that the property was bought from that account.
- [35] I had the opportunity of observing the parties while giving their oral evidence. During cross-examination, I found that Mr. Ubanks was somewhat evasive in his answers. He either did not recall the information or simply refused to cooperate. Only an unfavourable inference can be drawn from his demeanour and responses.
- [36] I therefore reject his evidence that the property was purchased by himself and the 1st Defendant only and that Mr. Burnette's name was only added to the title because of his relationship to the 1st Defendant.
- [37] Mr. Ubanks gave evidence that after the purchase of the property in 2009 he gave further money towards financing the construction of the building. He however, noted that he did not know whether the building was incomplete and that he has never spent a night at the premises. This begs the question of whether Mr. Ubanks intended for the monies given to his ex-wife for the purchase of the property to be an advancement (see *Pettitt v Pettitt* - [1969] 2 All ER 385) or whether he intended to hold the beneficial interest in the property in equal shares with the 1st Defendant as he claims.

[38] Mrs. Ubanks maintained that the 2nd Defendant contributed towards the purchase of the property. However, she went further to note that the intention behind purchasing the property was to secure a home for her son in Jamaica after he got into legal trouble in the United States. She argued that they feared that he would be deported to Jamaica. Additionally, unlike the Claimant she was able to produce Bill of Quantities which she exhibited to her Affidavit which spoke directly to the construction of the building on the subject property. The evidence of Mrs. Ubanks was corroborated by the evidence of Mr. Burnette.

[39] Mrs. Ubanks' evidence is not without fault; I find that her evidence in chief somewhat differs from her evidence under cross examination at the trial. Her initial evidence was that the Claimant contributed to the purchase of the property, albeit, that his contribution was minimal, however, whilst giving her oral evidence she noted that the monies advanced by the Claimant was a loan and that she was pressured to put his name on the title by him. She did not speak to whether the loan was repaid and the Court should not be left to assume.

[40] Despite these inconsistencies in the 1st Defendant's evidence, on a balance of probabilities, I find the Defendants' version of events to be more credible than that of the Claimant.

[41] Given my findings, I conclude that Mr. Ubanks' overall dealing with the property suggests that he never intended to hold a beneficial interest in the property beyond the value of his contribution therefore no constructive trust can be said to have been created.

Resulting Trust- Whether based on the contribution of the parties, it would be inequitable for the parties to hold the property as joint tenants

[42] As stated earlier, where the dispute is between spouses, the Courts has moved away from an approach which focuses solely on the contribution of the parties and have now taken a more holistic approach in assessing the overall conduct of the parties in their dealings with the land in order to give effect to what the parties

bargained for. Nevertheless, the doctrine of resulting trust is still relevant as spouses often embark on commercial transactions where their respective contributions may differ and it would be unconscionable to allow one party to benefit beyond his/her contribution.

- [43] P.A. Williams, J (as she then was) noted this distinguishing feature in ***Merna Benian v Karl Evans Brown*** [2015] JMSC Civ. 59 when she applied the dicta of Walker J in case of ***Stack v Dowden***, supra. Walker J expressed as follows:

*“I would (at the risk of confusion) add one qualification. The doctrine of a resulting trust (as understood by some scholars) may still have a useful function in cases where two people have lived and worked together in what has amounted to both an emotional and a commercial partnership. The well-known Australian case of *Muschinski v Dodds* (1985) 160 CLR 583, 62 ALR 429, 60 ALJR 52 is an example. The High Court of Australia differed in their reasoning, but I find the approach of Deane J persuasive:*

“That property was acquired, in pursuance of the consensual arrangement between the parties, to be held and developed in accordance with that arrangement. The contributions which each party is entitled to have repaid to her or him were made for, or in connexion with, its purchase or development. The collapse of the commercial venture and the failure of the personal relationship jointly combined to lead to a situation in which each party is entitled to insist upon realization of the asset, repayment of her or his contribution and distribution of any surplus.”

- [44] Though the case at bar does not involve a commercial transaction, it is clear based on the conduct of the parties that the property was not intended to be the family home of the Claimant and the 1st Defendant. It therefore means that different consideration ought to be given when determining the beneficial interests of the parties based on their respective contributions.

- [45] Mr. Ubanks produced proof that the sum of **Twenty-Six Thousand Five Hundred and Sixteen United States Dollars and Forty-Seven Cents (USD\$26,516.47)** was withdrawn from his 401K in December, 2010. However, he failed to produce any receipts to show that the money was used to construct the building on the

subject land. The 2nd Defendant also gave evidence that he was largely responsible for the purchase of the property and the building of the structure thereon. However, he too failed to provide proof of such payments. As stated earlier Mrs. Ubanks provided proof that she paid certain sums for the construction of the building but the question is still left to be answered whether it was the Claimant or the 2nd Defendant who financed the building of the structure on the subject property.

[46] Based on the evidence of the parties and their demeanour whilst giving their evidence, I find the Defendants to be credible witnesses. On a balance of probabilities, I therefore prefer their version of events. I conclude that the defendants have a greater interest in the property as I accept their evidence that they alone were responsible for the construction of the unfinished building on the property and that the Claimant's contribution is limited to the \$500,000.00 which he advanced towards the purchase of the land in 2009.

[47] Based on the foregoing conclusions, I find that the Claimant is entitled to the extent of his contribution to the purchase of the property. However, it would be unfair and unjust for the Claimant to be awarded 15% of the purchase price which is the contribution which he made in 2009. That would prevent the Claimant from realising any benefit from his investment, however small the Defendants may consider that to be. I therefore conclude that the Claimant is entitled to 15% of the current market value of the land.

Whether in all the circumstances it would be just to make an order for the partition and sale of the property

[48] The Claimant has made it clear that he no longer wishes to hold the property jointly with the defendants and he has called upon this Court for an order for the partition and sale of the property. Sections 3, 4 & 5 of the **Partition Act**, 1873 empowers and guides the Court in this regard. The sections provide that:

3. *In a suit of partition, where, if this Act had not been passed, a decree for partition might have been made, then if it appears to the Court that by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.*

4. *In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property to which the suit relates, request the Court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reasons to the contrary, direct a sale of the property accordingly, and give all necessary and consequential directions.*

5. *In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if any party interested in the property to which the suit relates, requests the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court may, if it thinks fit, unless the other party interested in the property, or some of them undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions, and in the case of such undertaking being given the Court may order a valuation of the share of the property requesting a sale in such manner as the Court think.*

[49] The right of a joint tenant to request that the court order a sale of the property and apportion the net proceeds as it deems fit has been discussed in several cases, such as the case of **Patterson v Patterson** [2019] JMSC Civ 10. In that case, D. Fraser J highlighted the dicta of Jessel M.R in **Porter v Lopes** [1877] 7 Chan 356 where the Master of Rolls commented on section 4 as follows:

“Now therefore, there is an absolute right in the owner of a moiety to require sale subject to this, unless it sees good reason to the

contrary, the Court shall direct a sale... Contrary to what? As I read it, it is contrary to a sale. It can mean nothing else. The Court must see good reason why there should not be a sale. I do not say there may not be some other good reason from the peculiar nature of the property, but it must be a good reason against the sale."

[50] It is undoubted that the decision of **Porter v Lopes, supra**, remains as good law and that it still stands that on the request of a joint tenant that the property be sold, the Court shall make such directions unless they have good reason to exercise its discretion to refuse to order the sale. Jessel M.R. noted that the objection from one of the joint tenants to the sale of the property will not suffice.

[51] Section 5 of the Act is of importance to the case at bar, that section allows a party who is objecting to the sale to undertake to purchase the share of the party requesting the sale. The Defendants seem not to be averse to this position and have themselves proposed that the Claimant be compensated to the extent of his beneficial interest in the property. I therefore conclude that the Defendants should be given the first option to purchase the Claimants interest in the property.

DISPOSAL

1. The Claimant is declared to have 15% of the legal and beneficial interest **in the land only** of the current market value of ALL THAT parcel of ELTHAM in the parish of SAINT ANN being the Lot numbered NINETEEN comprised in the Certificate of Title registered at Volume 1217 Folio 788.
2. It is declared that the 1st and 2nd Defendants are entitled to 85% of the legal and beneficial interest in the said property on terms to be agreed by them.
3. That the Claimant be compensated for his interest in the property in exchange for a duly execution Instrument of Transfer for the removal of his name from the Certificate of Title for ALL THAT parcel of ELTHAM in the parish of SAINT ANN being the Lot numbered NINETEEN comprised in the Certificate of Title registered at Volume 1217 Folio 788.

4. The parties are to agree on a reputable Valuator within 30 days of the date of this Order. If the parties are unable to agree within the requisite time period, the Registrar of the Supreme Court is empowered to appoint a valuator.
5. The cost of the valuation report is to be divided in accordance to their allotted share.
6. The Defendants have first preference to purchase the Claimants share, which should be completed with 90 days of the receipt of the valuation report by full payment.
7. If the Defendants fail to exercise their first option to purchase the Claimants share within the requisite time, then the property is to be sold on the open market and the Claimant be paid his allotted portion from the net proceeds.
8. In the event that any party fails or refuses to sign any document within a reasonable time after being requested to do so which is required to effect the Orders made herein the Registrar of the Supreme Court is authorized to sign on behalf of the party in default.
9. Each party to bear their own costs.

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Hon. S. Wolfe-Reece, J
Puisne Judge